

(2020) 01 GUJ CK 0017
In the Gujarat High Court

Case No : R/Criminal Revision Application No. 1627 Of 2019

Patel Sureshbhai Dawrkadas

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Negotiable Instruments (Amendment And Miscellaneous Provisions) Act, 2002 —
Section 147

Negotiable Instruments Act, 1881 — Section 138

Citation : (2020) 01 GUJ CK 0017

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : Kamlesh S Kotai, Asutosh M Desai, Mh Bhatt

Final Decision : Allowed

Judgement

B.N. Karia, J

By way of present application, the applicant has challenged the judgment and order dated 02.08.2019 passed by learned 5th Additional Chief Judicial Magistrate, Mahesana in Criminal Case No. 4576 of 2018 as well as judgment and order dated 05.11.2019 passed by learned 2nd Additional Sessions Judge, Mahesana in Criminal Appeal No.168 of 2019.

The facts of the present case are summarized as under:

That, the original complainant and applicant-accused were residing at Mahesana and the complainant is having shop under the name and style of Ambica Tyres and as Patel Tribhovandas of Pidharpura was sitting at the shop of the complainant and the applicant-accused was being a friend of that Tribhovandas, the applicant-accused came into the contact of the complainant and for personal work, the applicant-accused had a need of amount thus, complainant had given Rs. 6,00,000/- in cash on 06.04.2018 to the applicant-accused in presence of Patel Tribhovandas, and at that time, the applicant-accused gave assurance that

he will return such amount within 15 days. But, after passing time, the complainant demanded the amount thus, applicant-accused issued a cheque No. 000025 dated 09.05.2018 of Mahesana Urban Co.Op. Bank Limited, Mahesana and the complainant had deposited the said cheque in the bank on 09.05.2018 but the said cheque was returned from the bank with an endorsement of "Funds Insufficient" on 15.05.2018 and thereafter, the complainant issued notice to the applicant-accused through his advocate and sent it to the applicant-accused on 28.05.2018 through registered A.D. and that notice was served to the applicant-accused on 29.05.2018 though the applicant-accused had not given any reply of the notice nor returned the cheque amount thus, the complaint was lodged thereof and same has been registered as Criminal Case No.4576 of 2018 and in the said case, the applicant was sentenced. Thereafter, the applicant approached the learned Sessions Court but, vide judgment and order dated 05.11.2019, learned 2nd Additional Sessions Judge, Mahesana in Criminal Appeal No. 168 of 2019, confirmed the sentence imposed upon the present applicant. Thus, being aggrieved with the said order, the applicant has preferred present application. Today, when the matter was taken up for hearing, a joint request was made by learned advocates for the respective parties that dispute between the parties is settled amicably. That, dispute was settled by the complainant by accepting cheque amount of Rs. 6,00,000/-. Learned advocate for the respondent no.2 has produced affidavit filed by the respondent no.2, wherein the respondent no.2 has stated that he has received cheque amount of Rs. 6,00,000/- and he has no objection if the orders passed by the courts below would be quashed and set aside. An Affidavit filed by the respondent no.2 is taken on record. Learned APP for the respondent State has requested to pass necessary order in this matter.

Having considered the facts of the case and submissions made by learned advocates for the respective parties as well as learned APP for the respondent-State and considering the facts of the affidavit filed by the respondent no.2, it appears that the dispute is settled amicably between the parties and respondent no.2-original complainant has received cheque amount of Rs. 6,00,000/- from the accused-applicant.

The Apex Court in the case of Vinay Devanna Nayak V/s Ryot Seva Sahakari Bank Ltd. reported in AIR 2008SC 716 has observed as under in paras 17 and 18 of the judgment :

"17. As observed by this Court in Electronic Trade & Technology Development Corporation Ltd. V. Indian Technologists and Engineers, (1996) 2 SCC 739, the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operation and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of banking operations and ensures credibility in

transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realized this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002)".

18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We therefore dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent."

Applying the ratio of the aforesaid decision of the Apex Court to the facts of the present case as well as considering the settlement arrived at between the parties, I am of the opinion that the revision application is required to be allowed and the parties be permitted to compound the offence.

In the result, the revision application is allowed. The judgment and order dated 02.08.2019 passed by learned 5th Additional Chief Judicial Magistrate, Mahesana in Criminal Case No. 4576 of 2018 as well as judgment and order dated 05.11.2019 passed by learned 2nd Additional Sessions Judge, Mahesana in Criminal Appeal No.168 of 2019 stand quashed and set aside. The applicant-accused is acquitted of the charge under Section 138 of the Negotiable Instruments Act. Rule is made absolute to the aforesaid extent.